

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROMANO WOODS DIALYSIS
CENTER,

Plaintiff,

v.

ADMIRAL LINEN SERVICE, INC.,
et al.,

Defendants.

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CIVIL ACTION NO. H-14-1125

MEMORANDUM AND ORDER

This case is before the Court on Defendants' Request to Take Judicial Notice [Doc. # 49], to which no opposition has been filed. The Court **grants** the request in part and **denies** it in part.

The court may judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." FED. R. EVID. 201(b)(2). Specifically, the Court may take judicial notice of information on government websites. *See Kitty Hawk Aircargo, Inc. v. Chao*, 418 F.3d 453, 457 (5th Cir. 2005). The Medicare reimbursement rates for years 2012-14 are publicly available on the federal government's website, and the Court takes judicial notice of the rates for the relevant years.

The American Medical Association's Current Procedural Terminology Fourth Edition ("CPT") is a widely known and reliable source that is also available on the association's website. Courts can take judicial notice of AMA publications. *See, e.g., Gonzalez v. Apfel*, 113 F. Supp. 2d 580, 590 (S.D.N.Y. 2000). There is no dispute that the code description for CPT code 90937 is "Hemodialysis procedure requiring repeated evaluation(s) with our without substantial revision of dialysis prescription." Consequently, the Court takes judicial notice of this code description.

Defendants ask the Court to take judicial notice that their attorneys' fees are usual and customary. "The judge hearing a motion for attorneys' fees may take judicial notice of reasonable and customary fees, along with the case file." *Fluorine On Call, Ltd. v. Fluorogas Ltd*, 380 F.3d 849, 866-67 (5th Cir. 2004) (citing TEX. CIV. PRAC. & REM. CODE § 38.004)). Nonetheless, the ultimate determination of the reasonableness of requested fees and the calculation of the proper fee award are within the Court's discretion. *See, e.g., Nacol & Co. v. ADT Sec. Servs., Inc.*, 2011 WL 1542716, *9 (S.D. Tex. Apr. 21, 2011) (citing *Burnside Air Conditioning & Heating, Inc. v. T.S. Young, Corp.*, 113 S.W.3d 889, 897 (Tex. App. -- Dallas 2003, no pet.)). The Court agrees to take judicial notice that the hourly rates charged by defense counsel are usual and customary in the Houston, Texas area for attorneys of defense counsel's experience, education and expertise. The Court declines at this stage of the

proceeding, however, to take judicial notice that the actual fees charged are usual and customary. If Defendants are ultimately entitled to recover their attorneys' fees, the Court will review any request for fees and the supporting documentation, together with the briefing by all parties. As a result, it is hereby

ORDERED that Defendants' Request to Take Judicial Notice [Doc. # 49] is **GRANTED** as to the relevant medicare reimbursement rates; **GRANTED** as to the code description for CPT code 90937; **GRANTED** as to the hourly rates charged by defense counsel being usual and customary; and **DENIED** in all other respects.

SIGNED at Houston, Texas, this 24th day of **June, 2015**.



NANCY F. ATLAS
SENIOR UNITED STATES DISTRICT JUDGE